

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PHOENIX-PICCADILLY, LTD.)	
)	
COMPLAINANT)	
)	
v.)	CASE NO. 8790
)	
PICCADILLY BUILDERS, INC.)	
)	
DEFENDANT)	

ORDER DENYING MOTION TO DISMISS

On July 28, 1983, Piccadilly Builders, Inc. ("Piccadilly"), defendant in the above-styled action, filed a motion to dismiss the complaint filed against it by Phoenix-Piccadilly, Ltd. ("Phoenix"), a customer of the defendant. On August 5, 1983, Phoenix filed its response to the motion by Piccadilly.

Piccadilly alleges three grounds in support of its motion to dismiss. First, it argues that it is not a utility subject to the jurisdiction of the PSC under the definition of a sewage utility contained in KRS 278.010, which states as follows:

(3) "Utility" means any person...who owns, controls or operates or manages any facility used or to be used for or in connection with:

* * *

(f) The treatment of sewage for the public, for compensation, if the facility is a subdivision treatment facility plant, located in a county containing a city of the first class or a sewage treatment facility located in any other county and is not

subject to regulation by a metropolitan sewer district;

Piccadilly argues that this language should be read to mean that only those sewage treatment plants in Jefferson County that are located within the confines of a subdivision of single family houses and serve only a subdivision of single family houses can be a "utility" under the Commission's jurisdiction. Phoenix responded by pointing out that Piccadilly does, in fact, serve a particular subdivision of residential housing, and that to adopt the restricted reading of the statute as advocated by Piccadilly would deny many residential and commercial customers of sewage treatment plants in Jefferson County the protection of state regulation.

The Commission agrees that the interpretation of KRS 278.010(3)(f) proffered by Piccadilly is overly narrow. While conceding that the legislature could have used much clearer language to accomplish its purpose, the Commission is of the opinion that the General Assembly intended to bring every non-municipal sewage treatment plant operating in Kentucky under the jurisdiction of the Commission effective January 1, 1975. It simply defies logic to contend that the legislature meant to exempt sewage plants in Jefferson County from regulation if they happen to serve an apartment building or shopping center along with houses in a subdivision.

Moreover, as Phoenix points out in its response, the term "subdivision" is statutorily defined as "[a]ny division of a parcel of land into two or more lots or parcels for the purpose,

whether immediate or future of sale, lease, or building development[.]” (Emphasis supplied.)¹ Thus, even if Piccadilly served only apartment buildings and commercial property, it would still be considered a “subdivision” treatment plant since the land was previously “divided...for building development.”

Piccadilly next argues that the Commission has no power to exclude any excess capacity in Piccadilly's plant from the rate base since Piccadilly's plant was built and put into service prior to the January 1, 1975, date on which the Commission assumed jurisdiction. The Commission finds that this question should be passed to the merits of the case.

Piccadilly's third point is that KRS 278.010(3)(f) is unconstitutional “special legislation.” Such an argument is clearly misplaced since, as pointed out in the discussion above, the legislature did not intend to make any distinction between sewage utilities in Jefferson County and in the rest of the state. However, Piccadilly's argument here is more properly addressed to a reviewing court than this Commission.

Based upon the above-stated findings and being advised,

IT IS ORDERED that the motion to dismiss filed by Piccadilly be and it hereby is denied.

IT IS FURTHER ORDERED that the hearing in this matter be and it hereby is rescheduled for September 16, 1983, at 9:30 A.M., Eastern Daylight Time, in the Commission's offices in Frankfort, Kentucky.

¹KRS 100.111(22).

IT IS FURTHER ORDERED that all direct testimony to be presented at this hearing shall be pre-filed on or before August 26, 1983.

Done at Frankfort, Kentucky, this 18th day of August, 1983.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:

Secretary